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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Special Committee decision of 19 June 2017 concerning Puerto Rico

Report prepared by the Rapporteur of the Special Committee, Bashar Ja'afari (Syrian Arab Republic)

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I. Introduction

1. At its 6th meeting, on 19 June 2017, the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples adopted draft resolution A/AC.109/2017/L.12 on the question of the decision of the Special Committee of 20 June 2016 concerning Puerto Rico. In paragraph 12 of the resolution, the Special Committee requested the Rapporteur to submit a report on the implementation of the resolution. The present report was prepared by the Rapporteur in compliance with that request, considering the question of Puerto Rico in the light of previous reports prepared by the Rapporteur; recent political, economic, military and regional developments concerning Puerto Rico; and action taken by United Nations bodies on the matter.

II. Background information

A. General

2. Puerto Rico is the most easterly and smallest island of the Greater Antilles, in the Caribbean Sea. It has a land area of 8,959 km^2, including the small nearby islands of Vieques, Culebra and Mona. More than three fourths of Puerto Rico is mountainous, and the range that runs its length reaches an elevation of 1,338 m at its highest point.

3. Over the past seven decades, the island has evolved from an agricultural to an urban/industrial society, with slower population growth, higher life expectancy and massive migration to the United States of America. Most of the inhabitants speak Spanish, although a number also speak English.

4. According to the Government Development Bank for Puerto Rico, the population of Puerto Rico in 2014 was estimated at 3.6 million, with a population growth rate of -0.65 and a net migration rate of -8.93 migrants/1,000 members of the population.[1]

5. According to reports by *Agencia EFE* of 11 and 12 October 2017, Hurricane Maria, which had devastated Puerto Rico on 19 and 20 September 2017, had led to an acceleration of the migratory process from Puerto Rico to the United States (see sect. III below). Six thousand Puerto Ricans departed, mainly to the State of Florida, in the days immediately following the hurricane.

6. According to reports by CNN at the time, it was estimated that the population of Puerto Rico could be reduced by 20 to 30 per cent which would reduce the population to 3 million or less. There are no precise data on those who have entered the United States via Orlando, Tampa and Fort Lauderdale, Florida. It was estimated that, by December 2017, the figures for refugees of Hurricane Maria could reach 100,000. In 2016, 5.4 million Puerto Ricans were living in the United States. On 14 January 2018, the Puerto Rican daily newspaper *El Nuevo Día* reported that, in October, 85,502 more people left the island than entered, which represented double the average annual movement since 2005, and 2.6 per cent of the population. Before the hurricane, it was estimated that the population of Puerto Rico would decrease to 3.2 million by 2020. According to reports in *Claridad*, the current total migration may increase to several hundred thousand people, including mainly young and skilled people seeking economic opportunity, although seniors and citizens in other age ranges are leaving for reasons relating to deteriorating health services after the storm. The fact that the majority of people leaving the island today are young professionals

[1] Government Development Bank for Puerto Rico, Economic Analysis Division, December 2014.

contributes to a brain drain. According to the data of the Economic Analysis Division of the Government Development Bank for Puerto Rico, as at December 2014, the life expectancy at birth was 79.09 years for the total population (82.8 years for women; 75.46 years for men). According to the same source, between 2000 and 2007, about 359,585 Puerto Ricans settled in the continental United States, whereas almost 1 million had settled there between the 1950s and the 1980s.

7. United States citizenship is granted to people born in Puerto Rico. They do not have the right to vote in United States presidential or congressional elections unless they reside on the United States mainland. In addition, the Supreme Court of Puerto Rico has recognized Puerto Rican citizenship in a Court decision. Puerto Rico's Department of State issues a certification of such citizenship, which Puerto Ricans may claim through a protocol established by the Department.

8. The main political parties in Puerto Rico differentiate themselves mostly by their position on the ultimate political status of Puerto Rico, with none being satisfied with the status quo. The Partido Popular Democrático (PPD) favours an enhanced commonwealth status that is non-territorial and non-colonial. Under non-territorial status, Puerto Rico would cease to be subject to the territorial clause of the United States Constitution. United States citizenship would be retained but Puerto Rico would have greater governmental authority over its own affairs and more latitude to establish regional and international relations. A sector of PPD would like to legitimize once again the present free associated State status, which was rejected by the majority of the Puerto Rican people in the first part of the 6 November 2012 plebiscite. The Partido Nuevo Progresista (PNP) favours Puerto Rico's full integration as a state of the United States. Support for PPD remains slightly higher than for PNP. The third party, the Partido Independentista Puertorriqueño, favours independence for the island. There are pro-independence groups and organizations that do not participate in the elections because they consider that, in a colonial context, elections do not represent a true democratic exercise, while some cast strategic votes in favour of the PPD candidate for Governor in order to prevent the ascension to power of statehood supporters.

9. Over the years, several new political parties and organizations, such as the Sovereign Union Movement and the Working People's Party, were founded that have participated in elections, with limited results. Nevertheless, this development reflects the quest for new electoral options beyond the three traditional political parties that have existed in Puerto Rico for more than 50 years.

B. Constitutional and political status

10. Puerto Rico currently holds commonwealth status with the United States. The 1952 Constitution of the Commonwealth of Puerto Rico is described in detail in paragraphs 91 to 119 of the Rapporteur's report of 1974 (A/AC.109/L.976). In brief, the Government consists of: (a) a Governor elected for four years at each general election; (b) a Legislative Assembly comprising two houses, the Senate (27 members) and the House of Representatives (51 members), elected by direct vote of the adult population at each general election; and (c) a Supreme Court and lower courts. The jurisdiction of the United States federal courts includes Puerto Rico. Puerto Rico is represented in the United States Government by a resident commissioner, who is a non-voting member of the United States House of Representatives, but a voting member of any committees on which he or she sits. In the general election held on 8 November 2016, Ricardo Rosselló of PNP was elected Governor and Jenniffer González of PNP was elected Resident Commissioner, the first woman to hold that position. A developing trend in the context of the elections was that of independent candidates outside the traditional political parties standing for election. Such

candidates garnered a total of 17 per cent of votes for the governorship, between independent gubernatorial candidates Alexandra Lúgaro and Manuel Cidre, who obtained 170,000 and 88,500 votes respectively. An independent candidate who stood for election to the Senate, José Vargas, obtained the highest number of votes (150,000) of any legislative candidate. Another developing trend is the abstention of registered voters, which, in the 8 November 2016 elections, was 45 per cent of the 1.3 million registered voters in Puerto Rico.

11. There are two judicial systems: Puerto Rico's courts and the United States District Court for the District of Puerto Rico. The latter functions in Puerto Rico with limited jurisdiction and can be reached only for cases under United States federal law or for cases where there is diversity of State citizenship, that is, when a citizen of one State sues a citizen of another State. Cases before the Supreme Court of Puerto Rico involving federal law can be appealed to the United States Supreme Court. Appeals to the First Circuit are taken from the United States District Court for the District of Puerto Rico, which is a first-instance court.

12. Even after the establishment of a constitutional government for Puerto Rico in 1952, United States congressional authority over Puerto Rico remained unaltered. The United States Congress is vested with plenary power over Puerto Rico, including in the areas of defence, international relations, external trade, monetary and other matters, while the island is vested with local authority over designated areas. All laws concerning Puerto Rico's relations with the United States remained in force through the Federal Relations Act (see A/AC.109/L.976, paras. 120–132), under which Puerto Rico was brought within the trade, tariff and monetary systems of the United States. The United States also undertook responsibility for the defence of Puerto Rico. In 1958, Puerto Rico's Legislative Assembly requested changes in the Federal Relations Act, but they were not enacted. In 1959, three bills requesting changes in the political status of Puerto Rico were submitted to the United States Congress, but no action was taken on any of them.

13. Such attempts at changes in the political status of Puerto Rico, including by the Resident Commissioner in the United States Congress, have continued to no avail.

14. The results of a 1993 plebiscite, with virtually identical options to those offered in a previous plebiscite in 1967, were 48.4 per cent for the status quo (commonwealth), 46.2 per cent for statehood and 4 per cent for independence. Following this result and a request for clarification by the Legislative Assembly of Puerto Rico, Congress replied that the definition contained expectations that were not viable (see A/AC.109/1999/L.13, paras. 172–180). The Legislative Assembly then voted to hold another plebiscite in 1998.

15. The results of the plebiscite held on 13 December 1998 were as follows: 50.4 per cent for "none of the above", an option included by means of court action pursued by PPD; 46.7 per cent for statehood; 2.3 per cent for independence; 0.3 per cent for free association; and 0.06 per cent for commonwealth status. In the plebiscite, independence supporters distinguished themselves by also casting votes with the "none of the above" option, in an act of repudiation of what was considered an undemocratic exercise. Some political and civil society sectors increasingly question the validity of plebiscites by whose results the Government of the United States is not bound, and also whether the United States is actually willing to extend statehood. Many also call for a process of self-determination and decolonization in conformity with General Assembly resolution 1514 (XV) and resolutions of the Special Committee on the matter.

16. In July 2005, a vote was held whereby 84 per cent of voters opted in favour of a unicameral legislature for Puerto Rico. Although only 22 per cent of registered voters participated in that referendum, the results triggered a process whereby another

referendum was to be held in 2007 to potentially amend Puerto Rico's Constitution and establish a one-house system in 2009. On 29 June 2007, however, the Supreme Court of Puerto Rico ruled that it could not force the Legislative Assembly to initiate a constitutional amendment process for establishing a unicameral legislative system.

17. After the 1998 plebiscite, the then President of the United States, William J. Clinton, established the President's Task Force on Puerto Rico's Status. The Task Force comprises designees of each member of the President's Cabinet and the Co-Chairs of the President's Inter-Agency Group on Puerto Rico. On 5 December 2003, the then President of the United States, George W. Bush, named the 16 members of his Task Force, at the same time amending Mr. Clinton's executive order so that the Task Force would be required to report on the progress made biennially instead of annually.

18. In its report of December 2005, the Task Force stated that, while the current territorial status might continue so long as Congress desired, there were only two non-territorial options recognized by the United States Constitution, namely, statehood within the United States or full independence. The Task Force concluded that Puerto Rico belonged to but was not a part of the United States. It envisaged a two-stage process for an approach to the status issue. It first recommended that a federally sanctioned plebiscite be held in 2006 to ascertain whether the people of Puerto Rico wished Puerto Rico to remain a United States territory subject to the will of Congress or whether they wished to pursue a constitutionally viable path towards permanent non-territorial status with the United States. The Task Force then recommended that, if the voters chose to change the current territorial status, an additional referendum should allow them to decide between statehood and independence. If, on the other hand, the voters elected to maintain the current territorial status, the Task Force recommended that plebiscites be held periodically to keep Congress informed of the people's wishes. No plebiscite was held in 2006.

19. It is important to note that, both before and since the issuance of the 2005 Task Force report, some have questioned whether Puerto Rico's status as a United States territory is consistent with statements that the United States made to the United Nations in 1953, following the adoption of Puerto Rico's Constitution, in requesting that Puerto Rico be removed from the list of Non-Self-Governing Territories. In its official request to the United Nations, the United States stated that Congress had given Puerto Rico the freedom to conduct its own internal Government subject only to compliance with federal law and the United States Constitution.

20. Prior to the submission of the official request, the United States representative to the United Nations indicated orally that mutual consent would be needed to make changes in the relationship between Puerto Rico and the United States. That statement notwithstanding, the Department of Justice concluded in 1959 that Puerto Rico remained a Territory and was fully subject to congressional authority under the territorial clause of the United States Constitution. A broad spectrum of Puerto Rico's political and civil society sectors participating in hearings on Puerto Rico by the Special Committee maintain that the process of consultation of the Puerto Rican people regarding the status issue should take place in the context of international law, General Assembly resolution 1514 (XV) and resolutions on Puerto Rico adopted by the Special Committee since 1973.

21. In early 2007, the United States House of Representatives reopened its consideration of the political status of Puerto Rico, as two pieces of draft legislation aimed at resolving the status issue were debated in the Subcommittee on Insular Affairs of the Committee on Natural Resources. In March 2007, hearings were held. The draft legislation was not enacted.

22. In December 2007, the Task Force issued its second report on the question of the status of Puerto Rico. Again concluding that there were only two options available under the United States Constitution, the Task Force reiterated the three recommendations that it had put forward in its 2005 report.

23. The Task Force, as constituted under the Administration of then President of the United States Barack Obama, held its first meeting on 15 December 2009, expanding its focus to include matters affecting the economic development of Puerto Rico. Mr. Obama signed an executive order on 30 October 2009 that preserved the Task Force's original mission and required it to provide advice and recommendations to the President and Congress on policies that promoted job creation, education, health care, clean energy and economic development on the islands.

24. On 3 March 2010, the Task Force held hearings in San Juan. Testimony reflected a consensus that the Task Force must first address the status issue. The possibility of the constitutional assembly's serving as a mechanism for deciding the future political status of Puerto Rico was also broadly discussed during the hearings. There was objection to changes under the agenda of the Task Force, it being argued that it was contradictory to speak of economic development under the colonial model. The third report of the Task Force, issued in March 2011, included an overview of the relationship between the United States and Puerto Rico and the status issue, an executive summary covering status, economic development and recommendations in relation to Vieques, and a description of the next steps of the Task Force, which included the implementation of the recommendations, consideration of reports received from its members on the engagement of federal agencies concerning the recommendations presented in the report, and the holding of at least two summits in Puerto Rico in the following two years focusing on specific subject areas.

25. Most of the report's content on status consisted of recommendations for an accelerated decision-making process regarding the status issue, whereby Puerto Ricans could express their will regarding status options and action would be taken by the end of 2012 or soon thereafter. The Task Force recommended that under the United States Constitution the permissible status options include statehood, independence, free association and nationhood as a free associated State (commonwealth). The report included a description of each option. The Task Force specified that the United States Congress had the ultimate authority over the admission of states and that full independence involved a transition, including regarding citizenship status. The Task Force recommended that citizenship be preserved for Puerto Ricans who are United States citizens at the time of any transition to independence.

26. Reactions to the third report of the Task Force, as covered by the press in Puerto Rico, were mixed regarding the recommendations on status, encompassing statehood supporters, proponents of the application of international law to the case of Puerto Rico and those whose opinion was that the marginal preference of the Task Force for the two-plebiscite process favoured the statehood option. The argument suggested in the last-mentioned case was that, if the choice was for Puerto Rico to continue to be a part of the United States, then in the second plebiscite, free associated State supporters would be divided, owing to the added option of free association.

27. Another reaction was that the extensive recommendations in the report regarding Puerto Rico's economy and social matters were tied to a status consultation process seen as favouring statehood, given that the recommendations regarding the economy tended towards the further incorporation of Puerto Rico into the United States through increasing the control of federal agencies in the areas of education, health, security, the justice system, communications and energy. A future vote by the people of Puerto Rico for commonwealth status would then involve a choice not for

such status as it exists today, but rather for further integration into the United States, albeit not for the status of an incorporated territory. In his State of the Union address delivered in 2013, after having been inaugurated for his second term, Mr. Obama did not mention Puerto Rico, as some observers had expected he would.

28. A plebiscite, the fourth in the past 50 years, was held in Puerto Rico on 6 November 2012, on the same day as gubernatorial and municipal elections and the United States presidential elections. Almost 80 per cent of the island's electorate took part in the plebiscite.

29. Puerto Rican voters were asked: (a) whether they agreed with maintaining Puerto Rico's territorial status (commonwealth, yes or no); and (b) to indicate the political status they preferred from among three possibilities: statehood, independence or "sovereign commonwealth", a version of commonwealth status not supported by PPD. On the first question, 970,910 (54 per cent) voted "no", i.e., in opposition to maintaining the current political status, and 828,077 (46 per cent) voted "yes", i.e., in favour of maintaining the current political status. Of those who pronounced on the second question, 834,191 (61.16 per cent) chose statehood; 454,768 (33.34 per cent) chose free association; and 74,895 (5.49 per cent) chose independence. Some argue, on the basis of that result, that statehood was the clear victor and that blank votes should not be taken into account. However, 26 per cent of the voters left the second question blank, and there appears to be overall agreement that those voters were not in favour of statehood. Therefore, some maintain that when the blank or protest votes are factored in, the absolute majority (55 per cent) is actually against statehood. On the basis of those results, it appears that Puerto Ricans rejected the current commonwealth government status but were unable to agree on an alternative.

30. In Puerto Rico, the plebiscite was viewed as, alternatively, an opportunity to improve the island's economic future, a chance to shake off the vestiges of its colonial past and a ploy on the part of the Governor to win a second term. In Washington, D.C., the response to the 2012 plebiscite was mixed. The interpretations of the results by some members of the United States Congress mirrored the diverse interpretations on the island. In April 2013, Mr. Obama indicated that the United States budget included $2.5 million for yet another plebiscite. In August, the United States Senate Committee on Energy and Natural Resources held a hearing on the referendum. The Chairman of the Committee, Ron Wyden (Democrat, Oregon), and Representative Lisa Murkowski (Republican, Alaska), the ranking Republican member of the panel, concurred that the vote made clear that the majority of Puerto Ricans did not favour the "current territorial status".

31. For its part, in December 2013, the White House issued a statement noting that:

> [T]he results were clear, the people of Puerto Rico want the issue of status resolved, and a majority chose statehood in the second question. Now is the time for Congress to act and the administration will work with them on that effort so that the people of Puerto Rico can determine their own future.

32. In 2013, a bill setting forth the process for Puerto Rico's being admitted as a state of the Union had been introduced before the United States House of Representatives but was also not enacted. In 2014, the Puerto Rico Status Resolution Act was introduced before the United States Senate and referred to the Committee on Energy and Natural Resources on 12 February 2014. The bill would have authorized the State Elections Commission of Puerto Rico to provide for a ratification vote on the admission of Puerto Rico as a state of the United States on an equal footing with the other states in all respects. The bill was not enacted. A bill was not introduced in 2015.

33. Under the Administration of Mr. Obama, the budget for fiscal year 2015 sought $2.5 million for objective, non-partisan voter education regarding, and a plebiscite on, options that would resolve Puerto Rico's future political status, which should be provided to the State Elections Commission of Puerto Rico. Regarding that possible plebiscite, the Governor of Puerto Rico appointed a commission composed of former presidents of PPD whose task it was to define the options to be presented to the Puerto Rican people in the plebiscite. The members of that commission did not present a report because they were unable to reach an agreement, owing to the fact that a sector of PPD would like to legitimize once again the present free associated State status.

34. On the basis of a paper presented by an expert, Wilma Reverón Collazo, the limitations of the projected plebiscite from the perspective of international decolonization law were broadly discussed in the Caribbean regional seminar on the implementation of the Third International Decade for the Eradication of Colonialism, held in Quito in May 2013.

35. In March 2014, the United States Government Accountability Office released a report entitled "Puerto Rico: information on how statehood would potentially affect selected federal programs and revenue sources".

36. The case of *Puerto Rico v. Sánchez Valle* concerning the source of authority of the laws of Puerto Rico was brought to the United States Supreme Court. The matter of the United States Congress determining what cases Puerto Rican courts may prosecute was raised in an oral hearing on the case held by the United States Supreme Court on 13 January 2016. As amicus curiae at the oral hearing, Assistant to the Solicitor General, United States Department of Justice, Nicole A. Saharsky, departed from arguments previously made by the United States at the United Nations regarding the fact that Puerto Rico achieved self-government in 1952. At the hearing, United States Supreme Court Justice Stephen Breyer stated that the implication of the Court's writing an opinion on whether Puerto Rico were sovereign was enormous, and he opined on how the United States had told the United Nations that Puerto Rico was not a colony. Ms. Saharsky stated that, right then, Puerto Rico was a territory of the United States, and, as a result, it was not a separate sovereign under the double jeopardy clause. In another development reflecting the United States Congress as the source of authority over the laws of Puerto Rico, on 30 June 2016, the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) was enacted. PROMESA mandated the establishment of a Financial Oversight and Management Board in Puerto Rico. The Board, whose authority supersedes that of the laws adopted by the legislature of Puerto Rico, was established, and, as stipulated in PROMESA, has as its mandate to ensure that Puerto Rico has a balanced budget and has access to the capital markets for four consecutive years before its mandate would cease. At the time of reporting, due to its credit rating, Puerto Rico does not have access to the municipal bonds market.

37. Similar to reactions to the report issued in 2005 by the President's Task Force on Puerto Rico's Status, some have again questioned whether Puerto Rico's status as a United States territory is consistent with statements that the United States made to the United Nations in 1953, in particular after such expressions of views by the executive, judicial and legislative branches of the Government of the United States, the executive branch through the statements made before the United States Supreme Court by Ms. Saharsky in the *Sánchez Valle* case, the judicial branch through the Supreme Court decision of 9 June 2016 in the *Sánchez Valle* case, which held that the double jeopardy clause barred Puerto Rico and the United States from successively prosecuting a single person for the same conduct under equivalent criminal laws (see para. 36 above), and the legislative branch through PROMESA and the establishment of the Financial Oversight and Management Board.

III. Recent developments

38. On 11 June 2017, yet another plebiscite was held in Puerto Rico. The media in Puerto Rico and the United States, including *El Nuevo Dia*, the largest circulation daily newspaper in Puerto Rico, and *The New York Times* and *The Wall Street Journal*, reported on the plebiscite and that it was massively boycotted — by 77 per cent of the 2 million registered voters eligible to participate — thus rendering it illegitimate. PPD, as well as sectors supporting free association and independence, did not vote in the plebiscite in which the pro-statehood option received the support 97 per cent of the vote of those participating. Reports of international news outlets, such as the BBC and *El Pais*, also emphasized the low voter turnout for the plebiscite.

39. The majority of petitioners speaking before the Special Committee, at its 5th and 6th meetings, held on 19 June 2017, on Puerto Rico questioned the legitimacy of the plebiscite; many called for a constitutional status assembly, and several called for legislation for the transfer to Puerto Rico of the power of the United States Congress over all decisions regarding Puerto Rico (see A/AC.109/2017/SR.5 and A/AC.109/2017/SR.6).

40. The options available to voters in the plebiscite were: (a) statehood; (b) independence/free association; and (c) the current territorial status; the legitimacy of the exercise was questioned even in advance of 11 June. Inclusion in the plebiscite of the option of retaining the current territorial colonial status was imposed by the United States Department of Justice.

41. The general tendency in Puerto Rico is the rejection of the present colonial status, as reflected in the context of the Special Committee hearings on Puerto Rico, in which in 2016 the whole of the political spectrum came before the Committee to reject Puerto Rico's territorial status under the territorial clause of the United States Constitution.

42. The 11 June 2017 plebiscite options originally included only the options for statehood or free association/independence. An allotment of $2.5 million from the United States for the conduct of the plebiscite imposed the condition that the United States Department of Justice would have the final word on the status options to be presented. After the colonial Government of Puerto Rico changed the ballot to accommodate the demands of the Department of Justice, the United States entity remained non-committal regarding the results.

43. Resolutions of the General Assembly on Puerto Rico, since 1972, have maintained the applicability to the case of Puerto Rico of the Declaration on the Granting of Independence to Colonial Countries and Peoples (resolution 1514 (XV) of 14 December 1960). However, the recent appointment of a United States Financial Oversight and Management Board to oversee payment of Puerto Rico's $70 billion public debt, which is at a level above the elected Government of Puerto Rico, points to an intensification of colonial control over Puerto Rico.

44. On 19 and 20 September 2017, Hurricane Maria, a category 4 hurricane, swept through Puerto Rico two weeks after Hurricane Irma, also category 4, had skirted Puerto Rico and caused extensive damage.

45. Reports by *El Nuevo Dia* in the period from 27 September to 12 October 2017 indicated that damages were estimated at between $45 billion to $90 billion, with the most pressing problems being water and food distribution, electrical power, medical attention and treatment, telecommunications and obstructed roads and bridges that were partially or totally destroyed affecting the distribution of aid. The official death toll was 48. Figures varied according to the source. The proposed aid allocation of the United States Congress for Puerto Rico was $4.9 billion, an amount which would

have barely covered payroll obligations through December 2017. The number of homeless families was 225,000, with more than 100,000 houses destroyed; tens of thousands of houses remain without roofs, and tens of thousands of wooden houses were destroyed. Electrical power to hospitals and health facilities was greatly affected. Emergency electrical generators were affected, owing to deficiencies in fuel distribution. Provision of services for dialysis and oxygen was greatly reduced. Outbreaks of leptospirosis, conjunctivitis and other conditions were reported, as well as greater difficulties in providing care to elderly and bedridden patients. Large concentrations of garbage and debris were also a health hazard and impediment. Former state epidemiologist/former Secretary of Health of the Department of Health of Puerto Rico Johnny Rullán characterized the tallying and management of the fatalities that were directly or indirectly a product of Hurricane Maria as a "disaster".

46. The vast majority of electrical cables and poles were felled. The island nation did not have the materials to address the emergency and restore the electrical system. A week after the storm had passed through Puerto Rico, 85 per cent of small businesses remained closed. The stocks of goods in supermarkets decreased from day to day. Lack of electrical power affected banks and access to funds, 1.3 million beneficiaries of a food subsidy were unable to access funds received electronically. At ports, the unloading of containers with supplies was hindered by the lack of drivers and fuel shortages, compounded by the increase in demand for fuel due to the use of power generators and distribution centres having been destroyed or employees unable to resume their duties, as well as uncleared roads. The air traffic control system at Luis Muñoz Marín International Airport, Puerto Rico's main airport, suffered damages limiting outgoing and incoming flights.

47. The coffee, banana and plantain crops were totally lost, other agricultural activity was severely affected, as were the poultry and egg production sectors. The cattle sector lost large numbers of animals to displacement or drowning.

48. Mountainside municipalities were particularly affected. The lack of water and food supplies continues to be a severe problem in rural areas, where many communities remained isolated for an extended period of time. The countryside suffered extensive deforestation.

49. Puerto Rico was exempt from United States shipping laws for a mere 10 days after a request from the Governor. The shipping laws require that ships docking in Puerto Rican ports bear the United States flag and be staffed with United States personnel, when coming from United States ports. Because ships bearing the United States flag are the most costly shipping option, these laws have the effect of raising the price of consumer goods, including food products, entering Puerto Rico. Third countries that offered assistance to Puerto Rico were unable to access Puerto Rico due to this law.

50. Extensive news reports in Puerto Rico, the United States and internationally covered the dissatisfaction expressed by the Puerto Rican people, as voiced by the Mayor of San Juan, Carmen Yulín Cruz Soto. She spoke regarding the unequal treatment of Puerto Rico by the Government of the United States, as compared with its emergency relief response to other disaster areas, including in Texas and Florida. The slow response and inefficiency of the Government of Puerto Rico to the catastrophe has also been criticized in media coverage.

51. On 30 October 2017, the Office of the United Nations High Commissioner for Human Rights issued a press release entitled "Puerto Rico: Human rights concerns mount in absence of adequate emergency response".[2] The press released indicated

[2] Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22326&LangID=E.

that the hurricane had aggravated the island's existing dire situation caused by debt and austerity measures, and cited the concerns of groups of United Nations human rights experts regarding the humanitarian situation in Puerto Rico in the aftermath of Hurricane Maria.

52. The viability of the approved 10-year fiscal plan approved by the Financial Oversight and Management Board prior to Hurricane Irma and Hurricane Maria was redeveloped. According to *El Nuevo Día*, on 12 October 2017, Moody's Investors Service downgraded the Puerto Rican debt of $72 billion to the "Ca" category, indicating the low probability of bondholders recovering what had been lent to the Puerto Rican Government, after Hurricane Maria. Officials of the Puerto Rican Government warned that the dislocation in the revenues from taxes as a sequel of Hurricane Maria could force the Government to cease operations as soon as the end of [October 2017], it was indicated in a report by Ted Hampton, senior vice-president at Moody's, and other analysts at the firm.

A. Political developments

53. As described in previous reports, apart from general political questions, three specific issues have been raised at the meetings of the Special Committee in recent years stemming from the political status of Puerto Rico and its relationship with the United States: (a) the United States military presence in Puerto Rico, in particular on the island of Vieques; (b) the imprisonment in the United States of pro-independence Puerto Ricans accused of seditious conspiracy and weapons possession; and (c) the application of the death penalty to Puerto Ricans convicted on federal charges. In recent years, the issue of increased political persecution has been raised.

54. Throughout the incumbency of the Government of Puerto Rico elected in 2008, the major newspapers on the island reported on its intolerance towards minority views and violations of civil rights. Since 2010, they have reported on police abuse and on the compulsory nature of membership in the Puerto Rican Bar Association, a civil rights organization founded more than 140 years ago. In September 2011, the United States Department of Justice issued a report[3] in which concern was expressed regarding the excessive use of force by the Puerto Rico police force, for example, against students who were striking. The report concluded that the police had violated the civil rights of broad sectors of the population. It also indicated the existence of police corruption. According to a report of the United States Attorney General, Puerto Rico led all United States districts in the number of public corruption convictions (130) in 2011. In April 2013, it was revealed that the Administration of Mr. Obama had allocated $95 million for the establishment of a Federal Bureau of Investigation facility in Puerto Rico.

55. The issue of the Puerto Ricans accused of seditious conspiracy and weapons possession and imprisoned in the United States, including Oscar López Rivera, who as at May 2016 had been imprisoned for 36 years, has been covered in previous reports. In essence, a number of Puerto Rican organizations and political and civil leaders have claimed over the years that these were essentially political prisoners who received disproportionately long sentences. In August 1999, Mr. Clinton offered to release the prisoners conditionally, if they formally renounced violence. The offer was accepted by 11 of the original 15 prisoners, while 1 accepted a deal whereby he would be set free in five years. In 2002, another 2 of the original 15 prisoners were released, although 1, Antonio Camacho Negrón, was rearrested in August 2006 by the Federal Bureau of Investigation. Of the two remaining prisoners, Carlos Alberto Torres was paroled in July 2010. Mr. López Rivera (now 75 years old) was denied

[3] Available from www.justice.gov/crt/about/spl/pr.php.

parole on 18 February 2011 and remained in a maximum security federal prison in Terre Haute, Indiana. His appeal against that decision was rejected. The campaign for the release of Mr. López Rivera continued until his sentence was commuted on 17 January 2017 by order of the outgoing President of the United States, Mr. Obama. The order included a 120-day waiting period until his release, which expired on 17 May 2017, at which point he had served two days less than 36 years of his total 70-year sentence. Mr. López Rivera is said to have been among the longest-held political prisoners in the history of Puerto Rico — and in the world. Since the expiration of the 120-day waiting period, when all restrictions on his movement were removed, Mr. López Rivera has fully integrated into civilian life in Puerto Rico. He has also travelled extensively, including to New York in June 2017 to speak at the yearly hearings on Puerto Rico of the Special Committee, whose resolutions had repeatedly called for his release.

56. Avelino González Claudio, who was arrested in March 2008, was released on 6 December 2012. His brother, Norberto González Claudio, arrested on 10 May 2011, was sentenced to five years in a United States prison and was released after serving his sentence.

57. According to reports in the Puerto Rican media and as reflected in recent resolutions of the Special Committee concerning Puerto Rico, there is a strong consensus among Puerto Ricans in favour of the release of those imprisoned in cases relating to the struggle for independence.

58. Lolita Lebrón, who was incarcerated in United States prisons from 1954 to 1979 for pro-independence actions, died on 1 August 2011.

59. The issue of the application of the death penalty to Puerto Ricans convicted of crimes, despite the abolition of the death penalty in Puerto Rico in 1929, which was upheld in the 1952 Constitution, has been described in previous reports. At the yearly meetings of the Special Committee regarding Puerto Rico, petitioners from Puerto Rico, including representatives of the Puerto Rican Coalition against the Death Penalty, regularly voice their opposition to the death penalty.

60. On 16 March 2015, organizations from Puerto Rico made statements regarding the status of human rights in Puerto Rico during an audience before the seven commissioners of the Inter-American Commission on Human Rights, which was held at the beginning of its 154th period of sessions. They discussed discrimination in Puerto Rico, including against women, children with disabilities and immigrants, and efforts by the United States Government to impose the death penalty in Puerto Rico in violation of the Constitution of Puerto Rico. The representative of the United States in the Organization of American States requested that the Government of Puerto Rico be represented by its Secretary of State, César Miranda. In his intervention, the Secretary of Justice called for the release of the political prisoner, Mr. López Rivera, while the Secretary of State stated that Puerto Rico should be included in the reports of the Commission.

B. Military developments

61. As a result of the emergency situation that followed the passing of Hurricane Maria through Puerto Rico on 19 and 20 September 2017 (see paras. 44–52 above), in the initial emergency situation, 1,300 active military of the United States Army National Guard were activated. On 30 September, there were 4,600 personnel from all branches of the United States armed forces. As at 12 October, the number was estimated at 12,000. Roosevelt Roads, the site of the closed naval station, has been used as the base of operations of the Army's aid delivery.

62. The tenth anniversary of the cessation of military operations of the live-missile and bombing range operated by the United States was marked in 2013. As previously reported, for many years, Puerto Rico held an important military-strategic position within the United States Naval Forces Southern Command. In addition to its other military operations in Puerto Rico, from 1941 to May 2003, the United States Navy operated on Vieques, an island of just under 10,000 inhabitants located eight miles off the east coast of Puerto Rico.

63. The people of Vieques continue to struggle for the resolution of related issues: (a) environmental clean-up and decontamination; (b) the return of lands used by the United States Navy, now under the jurisdiction of the Department of the Interior Fish and Wildlife Service, to Puerto Rican peoples; (c) sustainable development and the health crisis; and (d) the future of the United States Roosevelt Roads naval station on the main island of Puerto Rico.

64. Vieques has been sectioned off for the purpose of the clean-up activities, with a portion of the eastern part of the island transferred to the Fish and Wildlife Service of the United States Department of the Interior, to be added to the existing Vieques National Wildlife Refuge. The United States Navy managed approximately 14,600 acres in the eastern portion of Vieques, which were used for amphibious training exercises and air-to-ground manoeuvres. Unexploded ordnance and remnants of exploded ordnance, which contain hazardous substances, have been identified in that area and in the surrounding waters. The United States Environmental Protection Agency has also indicated that the hazardous substances associated with ordnance that might be present in Vieques include TNT, napalm, depleted uranium, mercury, lead and other chemicals.

65. In the western portion of Vieques, the Navy operated an ammunition facility until 1948. The facility was reactivated in 1962 and closed in 2001. Later that year, the Navy transferred 3,100 acres to the Department of the Interior, 4,000 acres to the Municipality of Vieques and 800 acres to the Puerto Rico Conservation Trust.

66. In February 2005, the Vieques portion of the proposed Atlantic Fleet Weapons Training Area site was placed on the Environmental Protection Agency National Priorities List of the most hazardous waste sites in the country.

67. In March 2008, a federal inter-agency agreement was announced between the Environmental Protection Agency, the Department of the Navy, the Department of the Interior and the Commonwealth of Puerto Rico for the clean-up of portions of Vieques and its surrounding waters. The agreement requires that the environmental impacts associated with past and present activities on Vieques and its surrounding waters be thoroughly investigated and that appropriate action be taken in order to protect the community and the environment.

68. Culebra island, located about nine miles north of Vieques, was also part of the United States Navy training facilities. Although military activities ceased on Culebra in 1975 in response to public safety concerns, clean-up of the island has been slow, owing in part to legal issues regarding the use of federal funds.

69. Some 7,000 Vieques residents collectively sought compensation for health and property damage in the billions of dollars in a lawsuit, *Sánchez et al v. United States*, in which they claimed that the United States Navy had been guilty of negligence by exposing the 10,000-strong population of Vieques to dangerous levels of toxins for more than 50 years, leading to a cancer rate in Vieques that was 30 times higher than that for the rest of Puerto Rico and to other long-term effects. The plaintiffs' lawsuit failed.

70. In another report, the Agency, referring to the scientific data presented on health problems on Vieques, said that the limitations associated with those analyses

introduced considerable uncertainty and made interpretation difficult. It maintained that elevated levels of some chemicals found in people's bodies could be attributed to causes other than military activity and suggested that United States officials could work with the Government of Puerto Rico in obtaining additional samples and keeping track of health conditions on Vieques.

71. According to the Office of the Resident Commissioner, a bipartisan group of 17 members of the United States Congress addressed a letter in March 2014 to the United States Secretary of Defense urging the Department of Defense to fulfil its responsibilities regarding the clean-up of the islands of Vieques and Culebra.

72. On 10 December 2014, the Resident Commissioner announced that, as part of a comprehensive bill to fund the federal Government for the remainder of fiscal year 2015, the United States Congress had appropriated $17 million for the clean-up of Vieques and $1.4 million for the clean-up of Culebra. The report accompanying the bill also directed the Department of Defense to take a number of steps to improve the clean-up of the two islands.

C. Economic developments

73. Hurricane Maria significantly stalled the economy of Puerto Rico because of the damage to infrastructure described in paragraphs 44–52 above, in particular due to delays in the reconstruction of the electrical power distribution system, which was estimated to take months longer than anticipated and run into the year 2018 owing to a shortage of construction materials and supplies. In a chain reaction, the situation has caused the closing of 5,000 small business and many thousands more have had to dismiss employees. In addition, large retail and manufacturing have also been hindered. Unemployment has risen and thus government revenue has decreased. Furthermore, the accelerated mass migration and stymied population growth since 2014 has profound implications for the present economic situation and for future economic development. Austerity measures in the areas of education and scientific research and development, especially at the University of Puerto Rico, further cloud projections for future economic development.

74. According to numerous economists cited in reports in the media in Puerto Rico, including *El Nuevo Dia*, *Primera Hora*, *El Vocero* and *Claridad*, the recently approved United States tax reform is projected to cause the loss of up to 70,000 manufacturing jobs in Puerto Rico, given that the reform would impose a 12.5 per cent tax on goods exported to the United States by United States manufacturers doing business in Puerto Rico because they fall into the category of controlled foreign corporations, to which the tax applies.

75. Since 2006, Puerto Rico has been in an economic recession. The Economic Activity Index, a measure of the economic activity of Puerto Rico developed by the Government Development Bank for Puerto Rico,[4] registered a 0.5 per cent year-over-year reduction in September 2016 compared with September 2015. In November 2016, the Bank reported that the number of persons employed in Puerto Rico as at October 2016 was 973,600, representing a decrease of 1.4 per cent compared with October 2015. The unemployment rate averaged 13.0 per cent in 2015.

76. In February 2015, Standard & Poor's Ratings Services lowered Puerto Rico's general obligation debt by three notches, to B from BB, citing a judge's decision to void the plan for debt restructuring and Puerto Rico's potential inability to pay its debts. In a press release dated 12 February 2015, the President of the Bank expressed her disappointment with the decision, which also entailed downgrading of outstanding

[4] Government Development Bank for Puerto Rico, "Economic Activity Index", November 2015.

bonds of the Bank and other entities, including the Puerto Rico Sales Tax Financing Corporation and the Puerto Rico Municipal Finance Agency.

77. In February 2015, a United States federal judge declared the Puerto Rico Public Corporation Debt Enforcement and Recovery Act (enacted in June 2014) unconstitutional.

78. The policy of the privatization of public enterprises or their components as an economic development measure has been met with discontent. Despite widespread protests against a proposal to privatize the administration of Puerto Rico's Luis Muñoz Marin International Airport, the Federal Aviation Administration approved the contract with Aerostar Airport Holdings, and plans to privatize the Electrical Power Authority were announced in mid-January 2018.

79. As an austerity measure aimed at reducing Puerto Rico's then $3.2 billion budget deficit and addressing the issue of high public sector employment, more than 20,000 workers have been laid off since 2009.

D. Regional developments

80. In the Declaration adopted at the Fifth Summit of the Community of Latin American and Caribbean States, held in Punta Cana, Dominican Republic, on 25 January 2017, Heads of State and Government reiterated the Latin American and Caribbean character of Puerto Rico and, in taking note of the decisions on Puerto Rico adopted by the Special Committee, reaffirmed that the matter was of interest to the Community of Latin American and Caribbean States. In that vein, they commended the amnesty recently granted by the United States to the independence leader Mr. López Rivera. Member countries of the Community committed themselves to continue working, in the framework of international law, particularly in the framework of General Assembly resolution 1514 (XV), to make the region of Latin America and the Caribbean a territory free of colonialism and colonies.

81. The Final Declaration adopted by the Heads of State and Government of the Bolivarian Alternative for the Peoples of Our Americas (ALBA), who met in Havana on 14 December 2014, ratified Puerto Rico's Latin American and Caribbean nature and reiterated that its full independence and decolonization constituted a matter of great interest to the member countries of ALBA.

IV. Previous action taken by the United Nations

A. General

82. Since 1953, the United States has maintained a consistent position regarding the status of Puerto Rico and the competence of United Nations organs to examine that status, based on resolution 748 (VIII), by which the General Assembly released the United States from its obligations under Chapter XI of the Charter of the United Nations. It has maintained that Puerto Rico has exercised its right to self-determination, has attained a full measure of self-government, has decided freely and democratically to enter into a free association with the United States and is therefore beyond the purview of United Nations consideration.

83. Expressions of views by the executive, judicial and legislative branches of the Government of the United States, the executive branch through the statements made before the United States Supreme Court by Ms. Saharsky in the *Sánchez Valle* case, the judicial branch through the Supreme Court decision in the *Sánchez Valle* case (see paras. 36–37 above), and the legislative branch through PROMESA and the

establishment of the Financial Oversight and Management Board, are contrary to the statements that Puerto Rico has attained a full measure of self-government and to statements that the United States made to the United Nations in 1953 (see paras. 12, 18, 19 and 20).

84. The Puerto Rican forces in favour of decolonization and independence have contested the affirmation set out in paragraph 82 above. In paragraph 9 of resolution 748 (VIII), the Assembly expressed its assurance that due regard would be paid in the eventuality that either of the parties to the mutually agreed association might desire any change in the terms of that association.

85. Information on action taken by United Nations bodies with regard to Puerto Rico prior to 1974 is contained in the 1973 report of the Rapporteur (A/AC.109/L.976) and subsequent reports.

B. Action taken by the Special Committee

86. At its 1st meeting, on 22 February 2017, by adopting the suggestions relating to the organization of work put forward by the Chair (see A/AC.109/2017/L.2), the Special Committee decided to take up the item entitled "Special Committee decision of 20 June 2016 concerning Puerto Rico" and to consider it at plenary meetings.

87. At the 3rd and 5th meetings, on 12 and 19 June 2017, the Chair of the Special Committee drew attention to a number of communications received from organizations requesting to be heard by the Committee on the subject of Puerto Rico. The Special Committee agreed to accede to those requests and heard a number of representatives of the organizations concerned at its 5th and 6th meetings, both held on 19 June (see A/AC.109/2017/SR.5 and 6). At the 6th meeting, the Chair drew attention to a report prepared by the Rapporteur of the Special Committee (A/AC.109/2017/L.13).

88. At the 6th meeting, the representative of Cuba, on behalf of Bolivia (Plurinational State of), Ecuador, Nicaragua, the Russian Federation, the Syrian Arab Republic and Venezuela (Bolivarian Republic of), introduced draft resolution A/AC.109/2017/L.12. A statement was made by the representative of China.

89. Also at the 6th meeting, statements were made by the representatives of the Bolivarian Republic of Venezuela (on behalf of the Non-Aligned Movement), Bolivia (Plurinational State of), the Syrian Arab Republic, Nicaragua, Ecuador, Venezuela (Bolivarian Republic of) and Cuba. At the same meeting, a statement was also made by the observer of El Salvador on behalf of the Community of Latin American and Caribbean States (see A/AC.109/2017/SR.6). At the same meeting, the Special Committee adopted draft resolution A/AC.109/2017/L.12 without a vote. Following the adoption of the draft resolution, the representative of Cuba made a statement.

C. Action taken by the General Assembly

90. During the seventy-second session of the General Assembly, no draft resolution on this issue was submitted to the Assembly for action.